



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF MAY 8, 2003**

CALL TO ORDER: Chairperson Cohen called the meeting to order at 7:10 p.m.

PRESENT: Chairperson Cohen, Commissioners Harrison, Natarajan, Sharma, Thomas,

ABSENT: Weaver

STAFF PRESENT: Dan Marks, Planning Director
Jeff Schwob, Deputy Planning Manager
Larissa Seto, Senior Deputy City Attorney
Barbara Meerjans, Associate Planner
Christine Daniel, Deputy Director, Development and Environmental Services
Kathleen Livermore, Senior Planner
Laura Gonzales-Escoto, Deputy Director, Office of Housing and Redevelopment
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Mark Eads, Video Technician

APPROVAL OF MINUTES: None

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 4, 5, AND 6.

A separate vote was taken for Item No. 5, as Commissioner Harrison recused himself because his business was located proximate to the item.

IT WAS MOVED (WIECKOWSKI/THOMAS) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBER 5.

Item 5. FARMER'S MARKET – 37392 37292 Fremont Boulevard (Bill Ball Plaza) and Bonde Way – (PLN2003-00244) – to consider an amendment to a Conditional Use Permit application for a Farmer's Market in the Bill Ball Plaza at 37292 Fremont Boulevard and on Bonde Way in the Centerville Planning Area. This project is categorically exempt from CEQA review, per Section 15304, Minor Alterations to Land.

MODIFICATION TO STAFF REPORT

Add C-18: No vehicle heavier than 2 tons may be driven onto the plaza. The weight of 2-tons accounts for a fully loaded standard pick-up truck.

HOLD PUBLIC HEARING;

AND

FIND PLN2003-00244 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND LOCAL ECONOMY CHAPTERS. THE PROJECT CONFORMS TO THE GOALS AND OBJECTIVES OF THE CENTERVILLE PLANNING AREA. THE PROJECT IS ALSO CONSISTENT WITH THE GOALS AND POLICIES SET FORTH IN THE CENTERVILLE SPECIFIC PLAN;

AND

APPROVE PLN2003-00244, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B".

The motion carried by the following vote:

AYES:	5 – Cohen, Natarajan, Sharma, Thomas, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	1 - Weaver
RECUSE:	1 - Harrison

IT WAS MOVED (THOMAS/HARRISON) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 4 AND 6.

- Item 4. PIETKIEWICZ ADDITION – 45949 Hidden Valley Terrace – (PLN2003-00181)** – to consider a Major Amendment to a Planned District to allow a 2' 4" encroachment into required side yard for a two-story addition (794 square feet) to an existing residence located in Mission San Jose Planning Area. This project is categorically exempt from CEQA review, per Section 15301, Existing Facilities.

HOLD PUBLIC HEARING;

AND

FIND THE PROJECT IS CATEGORICALLY EXEMPT FROM CEQA, PER SECTION 15301, EXISTING FACILITIES;

AND

APPROVE PLN2003-00181, AS SHOWN ON EXHIBIT "A", SUBJECT TO CONDITIONS ON EXHIBIT "B" AND THE COLOR BOARD SHOWN ON EXHIBIT "C".

- Item 6. CIP/ICAP 2003-2008 – (PLN2003-00254)** – to consider a Finding for General Plan conformity for the Five Year Capital Improvement Program & Integrated Capital Assets Plan (CIP/ICAP) 2003-2008. This project is exempt from CEQA review, per Section 15061 (b) (3), because the project has no potential for causing a significant effect on the environment. Environmental review of specific projects in the CIP/ICAP will be undertaken separately prior to construction.

Commissioner Natarajan asked if there was a sense of what the two million dollars (which was allocated for the next two years for the Downtown Plan City Hall start-up) would be used toward.

Planning Director Marks replied that it would pay for consultant work and some of the pre-work with some of the potential developers. It would also be used for a down payment for several major projects in the area.

HOLD PUBLIC HEARING;

AND

FIND CIP/ICAP GENERAL PLAN CONFORMITY FINDING, PLN2003-00254, IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE GOALS, OBJECTIVES AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE, HOUSING, PARKS & RECREATION, HEALTH & SAFETY, OPEN SPACE, PUBLIC FACILITIES, TRANSPORTATION AND NATURAL RESOURCE CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT; AND RECOMMEND THE CIP/ICAP FOR CONSIDERATION AND APPROVAL TO THE CITY COUNCIL.

The motion carried by the following vote:

AYES:	6 – Cohen, Harrison, Natarajan, Sharma, Thomas, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	1 - Weaver
RECUSE:	0

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

- Item 1. HOUSING & LAND USE ELEMENT REVISIONS – Citywide – (PLN2001-00111)** – to consider revisions to the Housing Element of the City's General Plan in response to comments from the State Department of Housing and Community Development. Corresponding changes are proposed within the City's Land Use Element to achieve consistency between the elements. A Negative Declaration has been prepared and circulated for this project (continued from April 24, 2003).

MODIFICATION TO STAFF REPORT

Page 9 of the staff report, Item "i." Carol Commons should read [~~2~~ 3 moderate income units] under review.

ADDENDUM TO THE HOUSING ELEMENT

APPENDIX C, page C-11. Add the following additional note to the "**": See page 81 of the Element for additional discussion on this site.

Planning Director Marks, introduced Jeff Schwob, Deputy Planning Manager, Christine Daniel, Deputy Director, Development and Environmental Services, and Laura Gonzales-Escoto, Deputy Director, Office of Housing and Redevelopment.

Chairperson Cohen stated that the public hearing was still open from the previous hearing. He noted that no one wanted to speak, so he closed the public hearing.

Commissioner Wieckowski recalled a previous speaker who claimed that sites that were deemed appropriate for housing in the Housing Element were, in fact, inadequate. He asked for a summary of the sites that were potentially developable.

Deputy Planning Manager Schwob stated that Exhibit 4 responded to the sites that were brought up at the last public hearing, as follows:

- Site 107 Removed from the current inventory of the Housing Element, because a new ReMax office building was being constructed on this site.

- Sites 207 and 485 Development project on this site was scheduled to be heard by the Planning Commission on May 22nd. The proposal was to be for 132 affordable units.
- Site 263 Prime opportunity site comprising four vacant acres with 400 feet of frontage along Peralta Boulevard, two stubbed residential streets, some lower density residential uses on two sides and an office building on another side with a church across the street.
- Site 446 Guardino farm on Walnut Avenue was close to BART, the Central Business District, parks and services, and was appropriate for higher density zoning.
- Site 728 Removed from current inventory, because the owner had submitted plans to upgrade and expand the buildings on the site.
- Sites 752, 753, 754 Shopping center at Grimmer and Fremont Boulevards was a prime opportunity for mixed-use development only. Half of the site's acreage has proposed for use thereby allowing most of the businesses to stay, if desired.

Commissioner Wieckowski asked if the last site was part of the Irvington Redevelopment Plan and what the timeline was for implementing it.

Deputy Planning Manager Schwob replied that it was and that the Commission had recommended approval of the Irvington Concept Plan and it was scheduled to be heard by the City Council on June 3rd.

- Site 785 High voltage power lines covered approximately one-third of the site, leaving two-thirds of the site available for development. It would be near to the future Warm Springs and Irvington BART stations. Areas under the power lines could be used for parking and open space.

Commissioner Wieckowski asked where this site was located.

Deputy Planning Manager Schwob stated that it was on Osgood Road north of Fry's.

- Sites 793-797 Near future Irvington and Warm Springs BART stations and would be appropriate for higher densities.
- Sites 830 & 834 Surplus sites owned by utility companies who were interested in disposing of the properties as surplus.

Commissioner Wieckowski asked if they would be impacted by the 2002 Hill Initiative.

Deputy Planning Manager Schwob answered that a slight upper portion might be impacted.

- Site 835 Five-lot subdivision on Deer Road that had been heard by the Commission and approved by City Council.
- Site 858 Located at Durham and Sabercat Roads, the former Sabercat Shopping Center that had been approved, but was not built, yet.

Commissioner Sharma opined that the sites near the BART stations made very good sense for mixed development.

Commissioner Wieckowski asked why Range 15, as stated in Exhibit B, Land Use Element, was not allowed at all BART stations, since it was allowed at the current Fremont BART station.

Deputy Planning Manager Schwob replied that it would be looked at when the specific plan for the Warm Springs BART area was created.

Commissioner Wieckowski recalled that the affordable housing advocates believed that the higher the density, the higher the possibility for more housing units for the low, very low and disabled communities. He asked for comments regarding the Law Center report that suggested removing public hearing constraints when a group home, for example, was proposed.

Deputy Director Daniel stated that the Housing Element anticipated that some public hearings would no longer be required. However, under State law, public notices were required when adjacent property rights would be affected. It was expected that the Reasonable Accommodation Ordinance would be amended to eliminate the public hearing requirement for some public hearings, but not all.

Commissioner Wieckowski asked what that threshold would be.

Deputy Planning Manager Schwob replied that Programs 44 and 45 addressed his questions. The fee for reasonable accommodation requests had been eliminated; the need for hearings on all reasonable accommodation requests that were, essentially, variance requests would be removed; and terms for residential care facilities to more state-of-the-art terms would be redefined.

Commissioner Wieckowski suggested that some of the City fees be removed for low and affordable developments to attract nonprofit developers. For example, a fee of \$175,000 was to be paid for 12 affordable units at Bridgeway. He wondered if there was something in the City Charter that did not allow for the waiver of some of these fees.

Deputy Director Daniel stated that the City Council had recently adopted an impact fee deferral policy for affordable housing projects that delayed the time when the fees were due.

Senior Deputy City Attorney Seto added that the fees were calculated on a per unit basis based on the amount of the expected development and cost to construct the facility (such as park facilities) within a certain period of time. If those fees were not charged to a particular development, they would have to come from some other City fund to keep the park fund whole.

Commissioner Wieckowski asked if those uncollected fees could be passed onto park users or citizens at large.

Senior Deputy City Attorney Seto replied that California State Law (AB1600) did not allow a developer to pay more than his fair share of the requirement.

A discussion ensued about whether various fees posed a constraint to nonprofit and affordable housing advocates trying to bring projects into the City. Deputy Director Gonzales-Escoto and Senior Deputy City Attorney Seto described the many different kinds of funds used to finance and develop affordable housing developments.

Commissioner Wieckowski wondered how open space could be considered an element of design as a part of infill projects. It had the flavor of discouraging density and maximum utilization of the remaining sites in the City. He asked if the City had made an actual commitment to use City lands in partnership with an affordable developer. He was thinking of the Centerville redevelopment site on Fremont Boulevard and the City Hall property.

Deputy Director Daniel stated that the Commission could make an open-space recommendation to City Council. No City land had been identified that would be appropriate at this point. A Request for Qualifications was out for the Centerville site, and housing was anticipated to be included with that project. The City Hall property was expected to continue its current use for the term of this Housing Element.

Commissioner Sharma questioned if truly affordable housing could be created for low and very-low incomes within the next three to five years. What could be built in the City for these incomes that would not be a huge building?

Deputy Director Gonzales-Escoto stated that the City of Fremont had been the largest investor in affordable housing for the last 20 years. She expected to see many projects come before the Commission soon. The Redevelopment Agency housing fund could only be spent on very low and low-income housing. In June, she expected the City to receive approximately \$17 million (through a bond issuance) to invest in this type of housing. The programs were active, the City had experience and the projects would continue to come before the Commission.

Commissioner Sharma asked how close to the Housing Element goal would the City be able to achieve in low and very low income housing. He proposed giving City employees City land on which to build houses.

Deputy Director Daniel stated that the Housing Element was the plan that should help the City to reach its goals. She expected that the Commission would be seeing redesignation of parcels to higher density for housing that would allow the housing unit goals to be achieved. She could not specifically state when the goal would be met.

Commissioner Natarajan reiterated comments she made at the last hearing, as follows:

- Creativity with regard to the density bonus program. For example:
 - Allowing density bonus for incorporation of childcare.
- Encouraging green building standards.
- Childcare.
- Incorporating a transit overlay district for one-quarter mile around the transit stations.
- Looking at density, diversity, and design.
- Revise guidelines to include a definition of the different types of houses and some sense of the square footage of each unit. The additional densities should not become super-sized units.
- A Floor Area Ratio or a size range of the units should be provided.
- Engineering standards should be revisited, along with landscape standards. The infill sites should not be looked at as suburban design projects, but more like urban projects. The guidelines should be performance based, rather than restrictive.

Commissioner Harrison asked for staff comments concerning parking requirements for mixed-use development and second units. He asked what was being shown by the arrow in Page 74, Illustration 27. He agreed that the nonprofit and affordable housing developers needed as much assistance as the City could provide, for example, making the maps showing the available designated sites around the City readily accessible.

Deputy Planning Manager Schwob stated that parking revisions would come to the Planning Commission as part of the multifamily zoning district and the second dwelling unit ordinance. Research was in progress concerning how other cities handled it and what worked for affordable projects. Facilities would not be under parked. The arrow was supposed to designate fees that did not belong to City.

Deputy Planning Manager Schwob answered that staff was working on maps that showed the different designated sites, maps that would be easily read and would be a convenient size. The idea was to pass them out as part of the incentives package.

IT WAS MOVED (HARRISON/NATARAJAN) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

RECOMMEND THE CITY COUNCIL FIND THE INITIAL STUDY CONDUCTED FOR PLN2001-00111 HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

RECOMMEND THE CITY COUNCIL APPROVE DRAFT NEGATIVE DECLARATION (PLN2001-00111) AND FIND IT REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;

AND

RECOMMEND TO COUNCIL APPROVAL OF PLN2001-00111 A GENERAL PLAN AMENDMENT PROPOSING REVISIONS TO THE HOUSING ELEMENT (EXHIBITS "A" AND "A-1") AND REVISIONS TO THE LAND USE ELEMENT (EXHIBIT "B").

The motion carried by the following vote:

AYES:	6 –Cohen, Harrison, Natarajan, Sharma, Thomas, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	1 - Weaver
RECUSE:	0

- Item 2. PASEO PADRE ESTATES – 40720 Paseo Padre Parkway – (PLN2002-00003)** – to consider a General Plan Amendment and Environmental Impact Report (SCH# 200201089) to change the land use designation from Open Space .25 dwelling units per acre to Medium Density Residential 6.5 -10 dwelling units per acre on approximately 19 acres located in the Central Planning Area. An Environmental Impact Report was prepared and circulated for this project (continued from April 24, 2003.)

ADDITIONAL INFORMATION TO STAFF REPORT

Exhibit "A" has been corrected to show the previously omitted 'study for-trail' designation. Page 14 of the Final Environmental Impact Report refers to two informational Figures (referred to as 12 and 13) that were inadvertently omitted from the document. Both informational figures were posted at the public hearing. The figure referred to in the document as 12 is now numbered Figure 13 and the other is labeled Figure 14.

Planning Director Marks introduced Associate Planner Meerjans, Senior Planner Livermore and Michelle Yesney, EIR Consultant.

Michelle Yesney introduced her associate, Shannon George. She emphasized that CEQA required that project impacts be compared to conditions on the ground at the point in time that the Notice of Preparation was circulated, in this case, January 15, 2002. Project impacts could not be compared to what might happen in the future. The role of an Environmental Impact Report (EIR) was to facilitate dialogue between a lead agency, interested members of the public and other governmental agencies. The impacts which could not be reduced to a less than significant level all related to inadequate access for residents and emergency vehicles and lack of availability of utility access. Other impacts for which mitigation must be achieved included noise and vibration from two existing sets of railroad tracks, wetlands in an

area where access would have to be located, existence of soils subject to liquefaction, soil erosion, and the presence of biotic resources. Techniques were available that could mitigate these impacts.

Chairperson Cohen complimented Ms. Yesney on her presentation.

Commissioner Natarajan asked for comments on the statement made in the letter received today from BART that stated Alternative 4 was not discussed in the Draft Environmental Impact Report (DEIR) but appeared in the Final Environmental Impact Report (FEIR).

Ms. Yesney replied that CEQA did not require that every alternative be included. The purpose of an alternative was to give the decision makers a better understanding of what techniques might be useful for reducing or avoiding impacts. Alternative 4 was a modification that more explicitly pointed out that if the access was 40 feet wide, 25 units could be built on the site.

Commissioner Natarajan noted that one existing condition was that there was no access to the site. If the EIR was approved, the Commission would be making an assumption that, at some point, an access would be available. It was known that BART would proceed through the site. Was that taken into account, or would changes be incorporated as more information became available?

Ms. Yesney replied that there were many possibilities for the site. The access impact questioned whether a future development could provide access improvements typically required in the City. It was impossible to fully evaluate the relationship of the project to a future BART alignment. If this land use designation was approved as proposed, when a development comes forward, the interrelationship of BART and the project would then have to be considered. The EIR reflected that uncertainty, as well as the City's commitment, from a policy standpoint, to making BART work. At the same time, an applicant could not be deprived from revising his project from a design standpoint in order to provide adequate access.

Commissioner Natarajan asked if any analysis had been performed concerning a site plan or layout to ascertain if Alternative 4 was possible.

Planning Director Marks replied that Alternative 4 indicated that further setbacks would be required. In his opinion, if a BART line traversed the site, there would be less overall development potential, but that some level of development was feasible.

Commissioner Harrison summarized the concerns noted in the report, which included noise, BART, utilities, emergency vehicles and environmental concerns. He asked how the EIR would have differed if just the future BART project was discussed. Would BART have to do an EIR?

Ms. Yesney stated that BART was doing an EIR and it was being circulated at this time. She understood that three alignments through this site were being considered. She asked if his question was if she was doing an EIR on BART or on this project with BART in place.

Commissioner Harrison was interested in hearing how BART would affect the EIR.

Ms. Yesney replied that this site already allowed a residential project, so she expected BART's EIR discussed the interface between their future alignment and residential development on this property. A residential neighborhood was already on the other side of the railroad lines and she believed that the BART EIR took it into consideration.

Chairperson Cohen opened the public hearing and announced that the applicant would be allowed to speak longer than the usual ten minutes.

Ariel Basse, attorney, stated that he was representing the applicant, Manual Dela Rose, a long-time member of the community with two prospering businesses in the City. He introduced Roger Shanks and Paul Kozanchenko, consultants. In the past, this property was not appropriate for development because it was located between two railroad tracks and was isolated from the neighboring residential subdivision to the east. Other impacts were noted in the FEIR. However, today new conditions existed, which were as follows:

- Old Western Pacific line south of Paseo Padre Parkway was sold to VTA.
- Union Pacific railroad line north of Paseo Padre Parkway was discontinued.

Mr. Basse continued by stating that the owner was in discussions with Union Pacific concerning the purchase of 1500 feet of their track north of Paseo Padre Parkway. When the tracks were removed, a 70-foot right-of-way would be available to create:

- A primary road from the site to Paseo Padre Parkway.
- A utility easement.
- An emergency vehicle access from the site to Lemos Lane along the City-owned land that was being used by PG&E for high transmission lines to which the Fire Marshall responded favorably.

Additionally:

- Approximately two additional acres would be gained for development, which would place it adjacent to the existing residential neighborhood to the east.
- Noise and vibration from this track would be eliminated.
- Another primary access and utility easement could be through the San Francisco/PUC land, which had been offered for sale by the City of San Francisco (copies of the letters were available).
- The new nearby Warm Springs BART station had become a reality since the application was filed two years ago.
- The two tracks (BART and railroad) would cross Paseo Padre Parkway at a point that would allow the City to build its grade separation project at Paseo Padre Parkway.

Many of the impacts that would have been created by his project and discussed in the EIR would be irrelevant. However, those same impacts would be created by BART, because BART would be built first. Staff's recommendation of denial of the GPA was based on information that had changed, as discussed above. If a GPA was not approved, the property would not be usable. The Housing Element discussed before this item would be helped by this project. A low of 52 units to a high of 100 units could be built on the eight to ten acres left after BART acquired its necessary right-of-way. Benefits to the City would include:

- The land use pattern of the existing neighborhood would be continued.
- Railroad tracks and an abandoned 48-inch water line would be removed.
- The City's housing stock would be increased.
- Affordable housing of 20 percent would be included.
- Pedestrian and bicycle pathways would be provided to Central Park and to the golf course.

Roger Shanks, consultant, closed with comments about how unknowns at the beginning of the process had become known. Union Pacific had written a letter stating that their eastern track was to be abandoned and they were willing to sell that property to the applicant, which would eliminate the barrier between the site and the residential property next door. With

approval of the General Plan Amendment, eight to ten acres would be available to be developed and would help to meet the City's housing needs. This project would provide housing under Program 19 by providing housing along a designated transit corridor.

Commissioner Thomas asked if the abandoned railway was 35 feet from the midpoint of the rails, which made the 70-foot width and if the wedge shown on the site map was part of the property. Did the transmission lines run all the way to the back fences of the existing houses?

Consultant Shanks agreed that the right-of-way was 70 feet wide with half on each side of the rails. A piece to the east of the railroad right-of-way had been acquired by the neighboring property owner adjacent to it.

Commissioner Harrison disclosed that he had met with the applicant and his agents prior to this meeting. He asked if the right-of-way access was needed for the Commission to grant the GPA.

Consultant Shanks replied that he had never seen access required at the General Plan stage; it was usually required at the Planned District stage.

Consultant Kozachenko stated that he also knew of no legal requirement. The General Plan Amendment could be approved without the applicant proving that he had obtained a legal right-of-way. He opined that the EIR writers took the narrow view when they declared that access was not available. Ample proof had been shown that access was available.

Commissioner Harrison asked that the BART letter be commented on.

Consultant Shanks stated that they had not seen the BART letter.

Commissioner Natarajan asked if an analysis had been performed that showed how the housing units would be laid out. The widest portion of the property would be 525 feet. She asked how wide the narrowest point was.

Consultant Shanks replied that sketches had been made taking into consideration where BART would be located and where the railroad would be relocated. Eight to ten acres would be left in a worse case scenario, which was sufficient land for a small-lot subdivision of 60 to 70 lots. This was calculated with BART taking its portion of the property and the eastern track right-of-way being available to add to the property. Sound walls and vibration trenches were ways of solving some of the problems. If a cluster plan was approved, a higher density could be achieved. He stated that the narrowest point would be 400 feet at the ditch.

Commissioner Sharma disclosed that he also had met both of the applicant's representatives. There were many ifs: If the railroad right-of-way could be bought and if the San Francisco/PUC property could be bought. What was the probability and the timeline of all of these wishes coming to together?

Consultant Shanks replied that the owner had wanted to develop this property for several years. He was confident that both pieces of property could be acquired. Even if the San Francisco/PUC land was not purchased, the railroad property would allow a public access road. The emergency vehicle access could be through the PG&E easement, which was owned by the City of Fremont, and it could also be developed as a trail.

Mr. Basse stated that the letter came from Union Pacific because the railroad was very interested in the GPA passing, thus allowing them to sell the property on which the tracks were located to his client.

Chairperson Cohen opened the public hearing.

Norman Howell, resident living across the railroad tracks, asked that this project to be held until BART's project was known to determine how it would impact this project. This new information that was presented at this hearing needed to be reviewed before any action was taken. He was not certain how the 70-foot railroad right-of-way fit into the total plan for the area. He noted that there would be a pipeline on the west of the railroad track. He wondered if the 10-foot landscaping easement behind his house had been figured in as part of the 70-foot right-of-way. Other neighbors near the transmission lines might wish to be publicly heard if an access was going to be made there.

Dick Wenzel, BART, summarized the letter given to the Commission and staff, as discussed earlier. The Warm Springs BART extension was a reasonable, foreseeable project that must be considered for the purpose of cumulative impacts, as well as the no project alternative analysis. BART concurred with staff recommendation to deny the GPA and believed that the FEIR should also be denied for the following reasons:

- Many new assumptions and pieces of information were before the Commission that had not been seen, previously. Changes in the project had resulted in changes in the EIR that had deprived the public of a meaningful opportunity to comment on the substantial adverse environmental effect of the project.
- The new Alternative 4 should be available for public review and comments. The secondary easement was assumed and did not exist at this time.
- BART needed to review the cumulative noise and vibration impacts and their mitigation measures, as stated in the FEIR.
- BART had provided information about the BART alignment four times during the year 2002 and 2003.
- The FEIR did not adequately address the inconsistency of the two projects. BART would require a narrow road leading to the portal, a train control bungalow, and a track and power substation, all of which would require setbacks within this parcel.

Mr. Wenzel closed with the request that the Final EIR be declined and recirculated, as well as the request that the GPA be denied.

Commissioner Wieckowski asked for comments on Mr. Basse's statement that the adverse impacts on the seasonal wetlands, the willow shrub habitat and the Styvers (SP?) Lagoon Nature area and wildlife habitat would be born by the BART project.

Mr. Wenzel replied that the draft EIR was being circulated for comments at this time and he could not speak to whether all of the adverse impacts would be caused only by BART. Concerning the wetlands, it would depend how the housing project was fitted around the BART project.

Commissioner Harrison asked if the BART emergency access and bungalows have to be in certain areas.

Mr. Wenzel replied that the accessory buildings and accesses have to be certain distances apart and at certain points along the track and have to be the least obtrusive.

Commissioner Natarajan asked if three alignments were still being considered or had the alignment that went through this site been finalized. She wondered when the tracks were scheduled to be constructed.

Mr. Wenzel replied that one specific alignment was proposed under the lake, which was Alternative 5 in the 1992 EIR. It would rise up the portal in the vicinity of this project. It was fixed and defined in the supplemental EIR. Under the current funding scenarios, service was planned to start sometime in 2008.

Commissioner Sharma asked how soon would BART figure out exactly where it would be on this parcel and how much of it would be used.

Mr. Wenzel replied that it was pretty defined at this time. There was not much wiggle room, it could vary two feet to the left or right or up and down. The final design engineering would be started soon, which should take approximately a year.

Chairperson Cohen announced a 10-minute recess at 8:55 p.m.

Chairperson Cohen called the meeting back to order at 9:05 p.m.

Mr. Basse closed with the statement that he did not understand BART's reluctance to support the General Plan Amendment and the final EIR. Approval would not prevent BART from completing their project. BART's worst-case scenario had been taken in consideration when estimating the eight to ten acres of developable land, which included the 1500 feet of railroad property on the western side. This project would not start until BART had started their project and until the City had constructed the grade separation. Approval would give the applicant time to devise a plan that fit best with the City's interests and would allow the City to add this site to its Housing Element inventory.

Commissioner Harrison asked if the applicant could address the 10-foot easement on the other side of the sound wall that Mr. Howell had mentioned. He asked if there would be the 10 feet at the back of Mr. Howell's property plus the 70 feet that was to be purchased from the railroad.

Mr. Basse replied that he understood there was a 10-foot easement and then the sound wall. The 10 feet would not be a part of the property that was to be developed. He agreed with Commissioner Harrison's estimate of the width of property at the back of Mr. Howell's property. The previously mentioned abandoned 48-inch pipe was believed to be on the applicant's property.

Chairperson Cohen closed the public hearing.

Commissioner Natarajan asked if the No Project Alternative would allow the applicant to build houses on the site. She asked why this was considered constrained land. She asked about the bridge and about the BART comments concerning no need to approve the EIR if the project was not approved. Did the new information change the noise and vibration maps and the access issues in the EIR and would the applicant have to come back with a new application?

Planning Director Marks replied that the No Project Alternative would allow two houses on the site. The existing access would have to be paved. The EIR considered this constrained because one had to go over constrained lands to reach it. A bridge was needed to provide travel over the two Hetch Hetchy water pipes. BART was correct if the project was denied, the EIR did not have to be acted upon. The applicant had applied for a project between two railroad tracks without access and that was what had been evaluated and what was before the Commission for a decision. The new information had not been evaluated by staff nor had there been a CEQA evaluation. The applicant needed to return with a revised application for the staff to evaluate. He expected that some modifications to the EIR would be needed.

Commissioner Thomas asked if the cart was being put before the horse. What would be the time delay if the applicant was asked to come back with a revised plan?

Planning Director Marks stated that the application before the Commission was a request to modify the General Plan for this site. He believed that it would be several weeks, if not several months, to review a revised project. However, a revised project, with all of the additional information brought forward at this hearing, was not before the Commission for a decision at this time.

Commissioner Thomas asked if the BART issue was ignored, how many months or weeks would be involved with bringing a revised application back to the Commission.

Planning Director Marks guessed that it would take several weeks to several months for a revised evaluation. BART had not adopted its revised project and their EIR was in the draft supplemental stage. He did not know if the applicant planned to present a revised application and this was not before the Commission for a decision.

Commissioner Sharma asked if the hearing should be reopened to ask the applicant what he planned to do or should the Commission deny the project with the expectation that the application would come back for review.

Planning Director Marks agreed with his assumptions and added that the Commission could also approve the GPA.

Chairperson Cohen opened the public hearing to allow the applicant to speak.

Commissioner Harrison asked how many times a year that GPAs could be heard.

Planning Director Marks replied that State law allowed four times a year. However, they were fit into the schedule depending upon how many applications were received.

Chairperson Cohen noted that two alternatives were available to the applicant.

Mr. Basse stated that he was not asking for approval of their project, but they were asking for approval of the General Plan Amendment that would redesignate open space to residential, 6.5 to 10 units per acre.

Chairperson Cohen closed the public hearing.

Commissioner Thomas stated that she had a problem with information coming to the Commission on the night of the meeting, which did not allow time to adequately review it. If the applicant wanted a definite action she would vote to deny.

Commissioner Sharma agreed with Commissioner Thomas. He felt that an intelligent decision could be made in the future after thoroughly reviewing the new information. However, if the applicant wanted a decision at this hearing, he would vote to deny.

Commissioner Natarajan asked if City Council would see the information as presented without the additional information that had been received during this meeting. She asked if the Final EIR would have addressed any of the new issues. If the applicant came back with a revised project that included all of the information that had been presented at this hearing, would a supplemental EIR process be started?

Planning Director Marks stated that all information that was given out at this hearing would be provided to the City Council. If the GPA was denied by the Commission and that action was appealed, all the information would still be forwarded to the City Council. Of course, they

would have it in advance of their meeting, which the Commission did not. He agreed that the Final EIR would not have been modified to address any of the additional issues. In all likelihood, a new or revised application would start a supplemental EIR process.

Commissioner Natarajan agreed with the other Commissioners. She did not understand why this project “was being rushed in parallel with the BART project.” She had a concern with the timing and the information coming in at the last minute.

Chairperson Cohen disclosed that he had met with Mr. Basse and Consultant Shanks yesterday.

Commissioner Harrison was torn. He would ordinarily support the proposal. He understood that the GPA approval was needed to facilitate buying the railroad property and it would “get the ball rolling.” He noted that 90 minutes ago the Housing Element had been approved, which declared that rezoning of certain properties would be necessary. Now the Commission seemed to be hypocritical by leaning towards not approving a rezoning. This site would have housing, eventually, and he would support the applicant.

Commissioner Wieckowski disclosed that he had also met with the applicants when the Draft EIR was presented in October 2002. He was inclined toward following staff’s recommendations. He asked that certification of the EIR be taken separately from the GPA.

Commissioner Sharma asked how the process was helped if the EIR was recommended and the project was denied. If the applicant came back with a revised application, would a supplemental EIR have to be done?

Planning Director Marks explained that approval of the EIR showed that it was an adequate document for evaluating the impacts and met CEQA requirements. Yes, a supplemental EIR would have to be done, if a revised plan was brought to the City.

Chairperson Cohen stated that there was no inconsistency in approving the EIR but denying the GPA.

Commissioner Harrison asked if a supplemental EIR was tantamount to starting over.

Planning Director Marks replied a supplemental EIR would add to what was already there.

IT WAS MOVED (WIECKOWSKI/HARRISON/) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION **RECOMMEND TO CITY COUNCIL CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT (EIR) (SCH#200201089).**

AYES:	5 – Cohen, Harrison, Manuel, Sharma, Wieckowski
NOES:	1 –Natarajan
ABSTAIN:	0
ABSENT:	1 - Weaver
RECUSE:	0

IT WAS MOVED (NATARAJAN/THOMAS) AND CARRIED BY THE FOLLOWING VOTE (5-1-0-1-0) THAT THE PLANNING COMMISSION **RECOMMEND TO CITY COUNCIL DENIAL OF THE GENERAL PLAN AMENDMENT.**

The motion carried by the following vote:

AYES: 5 – Cohen, Natarajan, Sharma, Thomas, Wieckowski
NOES: 1 - Harrison
ABSTAIN: 0
ABSENT: 1 - Weaver
RECUSE: 0

Planning Director Marks announced that the applicant had ten days to appeal to the City Council.

Item 3. MALITO RESIDENCE – 44733 Aguila Terrace – (PLN2002-00250) – to consider a Planned District Minor Amendment for a new 5,926-square foot detached single-family dwelling (6,896 square feet including the garage) located in the Mission San Jose Planning Area. This project is categorically exempt from CEQA review, per Section 15301, Existing Facilities.

Jim Miller, architect, stated that three planners had helped he and his client over the past three years. The house had been designed in conformance with the homeowner's association guidelines and with the Hillside Ordinance. The home was formal like most of the homes in the area. The roof stepped from front to back; the entrance, first level and second level were stepped back, consecutively; colors accented the different elements; and massing was balanced with symmetry. The current color palette was a good blend to give definition to the elements and character. He would prefer to not delete the side columns, as noted on one of the conditions. The one-story elements had been achieved. The hardscape in the front of the home created a "sense of entry."

Commissioner Natarajan asked how much of the site was covered by the home. It seemed extensive when the pool and decks were taken into consideration. She asked what the percentage of hardscape was in the front yard and were the windows white vinyl or beige. Were the balustrades integral to the design? They tended to look heavy and added to the mass of the building. Was the formality of the building part of the context or was it the overall architecture of the building? She asked if he and his client were willing to work with staff to incorporate the changes that the conditions required.

Mr. Miller was not sure how much of the site was covered. He agreed that the site was extensively utilized. His client wanted many areas available for outdoor activities. He guessed that at least 50 percent of the front yard was covered by hardscape. The windows were white vinyl with beige trim. The balustrades were integral to the design, as they were used on all elevations. His client was not willing to consider other styles of balustrades. He suggested that adding roofs to the one-story elements, which would create a covered veranda. However, the house would look like "a club sandwich" with layers of "things that don't need to be there." The formality was in context of the neighborhood and the houses on either side. They were willing to work with staff concerning the conditions, but felt that some of them had been met.

Commissioner Thomas asked if the balustrades curved around the front porch towards the viewer and angled out. Could the paving be narrower, as it was huge at the front of the house.

Mr. Miller stated that she was correct about the front balustrades.

Mr. Malito, owner replied that he wanted to create curb appeal and energy into and out of the property. He explained that he grew up in the east in an area where properties were two or more acres and had massive front yards. He felt that a narrower walkway would not be inviting.

Commissioner Sharma stated that most of the houses in the area had some kind of multilevel front appearance. He asked if the roof elevations could be changed to provide some breaks in the roofline.

Mr. Miller agreed that dropping the level of the roofline would be possible to do.

Chairperson Cohen opened the public hearing and stated that no one wished to speak.

Mr. Malito, closed by addressing the balustrades. He stated that he was considering balustrades that would have four-inch spacing between individual balustrades on the upper levels with nine inches on the lower level, which should reduce the mass. He stated that he had adhered to all of the staff's suggestions over time and the conditions noted in the staff report were new issues brought up by new staff.

Commissioner Thomas asked if he was not willing to reduce the front hardscape, would he be willing to reduce the paved area in the back, as most of the property was taken up with either house or concrete.

Mr. Malito agreed to lessen the pavement around the pool and in the terrace area and to replace it with landscaping. It would be difficult to get gardening equipment to the area by the garage because it was at a different level.

Commissioner Thomas, Mr. Malito and Mr. Miller discussed various ways to allow gardening equipment to be brought to that area. It was agreed that concrete could be reduced near the exercise area and at the end of the pool and be replaced with greenery.

Commissioner Sharma asked if they agreed to change the roofline.

Mr. Miller agreed.

Commissioner Natarajan stated that she was looking at the four conditions. She agreed doing anything to the roofline, other than Commissioner Sharma's suggestion, would change the entire design of the house. She suggested that the vertical elements, such as on the front porch at the middle of the house, be made a darker color. She also suggested that quoins and score lines would provide a sense of scale on the lower floor.

Mr. Miller stated that making the front vertical elements darker was acceptable. Score lines had been added and quoins would be difficult to incorporate, because of the multiple levels and it would be difficult to place them with uniformity.

Chairperson Cohen closed the public hearing.

Commissioner Natarajan stated that she would support the project, although the size and style of the house would be best suited on an estate-sized property with two acres of land. Every individual owner in the development seemed to have similar ideas for his dream house. The architecture, elements and colors were fairly consistent. The Commission had been encouraging individuality in home design for years, and she wondered if this conformity was because the architectural community had not educated their clients on choices or perhaps real estate values had played a role in providing the similarity among the homes. She stated that she knew the architect and he provided great home designs. This kind of subdivision had no FAR and building coverage standards. She agreed that this building conformed very well to the others in the development. She asked that the applicant continue to work with staff to develop refinements to the design.

Commissioner Sharma would support the project, if the roof were redesigned, which would reduce some of the massiveness of the house.

Commissioner Harrison complimented Commissioner Natarajan on her great ideas and Mr. Miller for agreeing to incorporate them, especially with regard to the vertical elements.

Chairperson Cohen stated that this had been a losing battle that the Commission has had with the homes on the hillsides and he was “figuratively throwing up his hands.” The house was too big for the lot, as were most of the other houses in the area. Floor area ratios needed to be imposed to discourage “too big houses . . . on these types of lots.” He acknowledged that it seemed that the Commission was nitpicking, but it was because of the houses being too big. He would support staff’s recommendation and whatever recommendations that were made by the other Commissioners.

Planning Director Marks stated that staff needed direction concerning reducing the hardscape.

Commissioner Thomas would like to see the hardscape - reduced in the front and the back must be reduced. However, she was not sure that it should be a condition.

Chairperson Cohen suggested that the applicant should work with staff to reduce the hardscape. If this project had not been on the next-to-the-last lot, he would not have approved it.

Planning Director Marks summarized suggestions from the Commission.

Commissioner Natarajan suggested that Conditions A-E11 and E12 be removed and suggestions made should be incorporated into the motion, such as, emphasizing the vertical elements, reducing the roof profile, reducing the hardscape, and continuing to work with staff relating to the refinements.

Planning Director Marks summarized the recommendations, as follows:

- Modify roofline on upper floors.
- Landscaping increased in rear by eliminating hardscape.
- Additional vertical elements and some others to be accented with darker, richer color.
- Work with staff to reduce hardscape in front, if possible.
- Strongly encourage changing white vinyl windows to almond to match trim.

Chairperson Cohen stated that he could not understand building a large, expensive house, like this and using vinyl windows.

IT WAS MOVED (NATARAJAN/HARRISON) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-1-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

FIND PLN2002-00250 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY’S EXISTING GENERAL PLAN. THE PROJECT CONFORMS TO THE GOALS AND OBJECTIVES OF THE MISSION SAN JOSE PLANNING AREA;

AND

APPROVE PLN2002-00250, AS SHOWN ON EXHIBIT “A”, SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT “B”.

AND

The motion carried by the following vote:

AYES:	6 – Cohen, Harrison, Natarajan, Sharma, Thomas, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	1 - Weaver
RECUSE:	0

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

Planning Director Marks reported that the City Council had heard the church item on appeal. The decision was to not send it back to the Commission, but to direct staff to revise the residential element.

- Information from Commission: Commission members may report on matters of interest.

Commissioner Wieckowski announced that the public artwork had been installed on the Target corner, which was quite nice.

Commissioner Natarajan stated that “question marks” artwork was at the Washington Hospital site, as well. She asked if trees or some kind of backing was planned to accompany that public art. She asked if the fence would be removed.

Planning Director Marks replied that he recalled that trees would be behind it as part of the landscaping. He stated that the hospital had agreed to remove the fence.

Meeting adjourned at 10:15 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte
Recording Clerk

Dan Marks, Secretary
Planning Commission